

FORM 33-II: Order Modifying License (Materials Licensee) (prohibiting involvement by individual employee in certain NRC-licensed activities)

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	Docket No. _____
<u>(LICENSEE)</u>)	License No. _____
<u>(City, State)</u>)	EA-YY-XXX

ORDER MODIFYING LICENSE
(EFFECTIVE IMMEDIATELY)

I

[Double space from here to end, except single space title of signing official]

(Name of licensee) (Licensee) is the holder of Byproduct/Source/Special Nuclear Material License No. ____ issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part _____. The license authorizes [possession and use of _____ curies of _____ in the manufacture, installation, servicing and operation of _____ devices. The license further authorizes _____.] The license, originally issued on (date), was renewed on (date), and is due to expire on (date) (or, is under timely renewal).

II

[This section should provide a description of relevant events, facts, violations, technical or legal reasons that provide the substantive basis for issuing the Order. The following example is provided as a sample discussion for this section.]

[On (date), an inspection (investigation) of licensed activities was conducted at Licensee's facility at _____ in response to allegations received in NRC Region __ on (date) regarding _____. As a result of the inspection (investigation), apparent violations of regulatory requirements were identified. These violations include _____. During the inspection (investigation), Licensee's employees informed NRC inspectors (investigators) that _____. Mr. A stated _____. Mr. B denied _____. Mr. C admitted _____. Contrary to the statements of Mr. A and Mr. B, it was determined that _____.]

III

[This section should provide the justification for issuing the Order, in light of the facts described in Section II, e.g., "Based on the above, it appears that (individual's name), an employee of the Licensee, has engaged in deliberate misconduct that has caused the Licensee to be in violation of 10 CFR __ and constitutes a violation of [e.g., 30.5, 40.5] by (individual's name). It further appears that (individual's name) has deliberately provided to NRC inspectors (investigators) information that he knew to be incomplete or inaccurate in some respect material to the NRC, in violation of 10 CFR [e.g. 30.5, 40.5]."] This section should also describe how the action of the named individual adversely affects public health and safety, e.g., "The NRC must be able to rely on the Licensee and its employees to comply with NRC requirements, including the requirement to provide information and maintain records that are complete

and accurate in all material respects. (Individual's name)'s action in causing Licensee to violate 10 CFR __ and his violation of [e.g., 30.5, 40.5] and his misrepresentations to the NRC have raised serious doubt as to whether he can be relied upon to comply with NRC requirements and to provide complete and accurate information to the NRC.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public, including the licensee's employees, will be protected if (individual's name) were permitted at this time to be involved in the performance of licensed activities. Therefore, the public health, safety and interest require that License No. _____ be modified to require (prohibit) _____ [should include a statement that the individual be prohibited from being involved in the performance of licensed activities for a period of time from the date of this Order.] Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the violation(s) (conduct) described above is such that the public health, safety and interest require that this Order be immediately effective.

IV

¹Accordingly, pursuant to sections __, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part __, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT LICENSE NO. ____ IS MODIFIED AS FOLLOWS:

[Specifically list how license is modified, e.g.:

A. _____

B. _____

C. (Individual's name) is prohibited for _____ years from the date of this Order from being involved in the performance of licensed activities.]

The Regional Administrator, Region __, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee or (individual's name) of good cause.

V

In accordance with 10 CFR 2.202, the Licensee must, and (individual's name) and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which the Licensee, (individual's name) or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region __, (regional address), and to the Licensee and (individual's name) if the answer or hearing request is by a person other than the Licensee or (individual's name). Because of continuing disruptions in delivery of mail to United

¹Include "104b" if any of the licenses subject to the order were issued under 104b.

States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301-415-1101 or by e-mail to hearingdocket@nrc.gov and also to the Office of the General Counsel either by means of facsimile transmission to 301-415-3725 or by e-mail to OGCMailCenter@nrc.gov. If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR § 2.714(d).²

If a hearing is requested by the Licensee, (individual's name), or any other person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the Licensee, (individual's name), or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the same time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION

Deputy Executive Director
for _____

Dated this _____ day of (Month) 20(XX)

²The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714 (d) and paragraphs (d)(1) and (d)(2) regarding petitions to intervene and contentions. For the complete, corrected text of 10 CFR 2.714 (d), please see 67 FR 20884; April 29, 2002.